

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: James W. Taylor et al.
Title: STABILIZED WATER-BORNE POLYMER
COMPOSITIONS FOR USE AS WATER-
BASED COATINGS
Appl. No.: 10/711,481
Filing Date: 9/21/2004
Patent No.: 7470751
Grant Date: 12/30/2008
Examiner: Tae H. Yoon
Art Unit: 1796
Confirmation Number: 5480

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 12/30/2008 as U.S. Patent No. 7470751.

The Patent Office determined that the patent was entitled to 679 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office’s interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008).

The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 995 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

There were no circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 995 days

(b) Total Applicant delay: 0 days

Final PTA Determination: 995 days

Applicants therefore respectfully request that the patent be accorded 995 days PTA.

The \$200.00 petition fee is being paid by credit card via EFS-web.

The patent is not subject to a terminal disclaimer.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16 1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

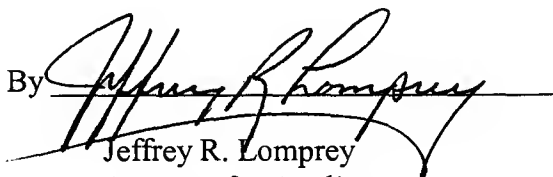
Date: December 31, 2008

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Patent Term Adjustment Calculation System

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Docket Number: 018894-0178
 Application Number: 10/711481
 Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	09/21/2004	0		
	14 month From Application date	11/21/2005	426		
	3 Year Period Starts	09/21/2007	1,095		
Edit Delete	Restriction Requirement	10/01/2007	1,105	(679)	
Edit Delete	Restriction Requirement Response Received at PTO	11/01/2007	1,136		
Edit Delete	Non-Final Office Action	12/26/2007	1,191		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	03/19/2008	1,275		
Edit Delete	Final Office Action	05/16/2008	1,333		
Edit Delete	Request For Continued Examination	08/12/2008	1,421		
	3 Year Period Stopped	08/12/2008	1,421	(326) 995	
Edit Delete	Notice of Allowance	09/05/2008	1,445		
Edit Delete	Issue Fee Paid	11/25/2008	1,526		
Edit Delete	Patent Grant Date	12/30/2008	1,561		
	Totals:			995	0
	PTA:			995	

669 days from 14 months
 Start of three yr.
 to grant

326 from
 Start of
 3yr. to grant -
 tolled by
 filing of RCE on
 8/12/08

669
 + 326
 995 days to
 grant

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